

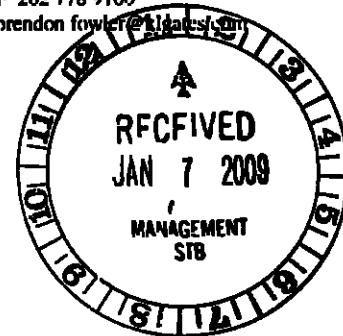
January 7, 2009

Brendon P Fowler  
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**Hand Delivery**

Ms Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S W.  
Washington, D C 20024

ENTERED  
Office of Proceedings  
JAN 7 2009  
Part of  
Public Record



**Re: Canadian National Railway Company and Grand Trunk Corporation –  
Control – EJ&E West Company, Finance Docket No. 35087**

Dear Ms Quinlan

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of the **Village of Barrington, Illinois' Motion for Waiver of or Permission to Exceed Page Limits**

Please time and date stamp the additional copy of this letter and the motion, and return them with our courier. Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Brendon P. Fowler".

Brendon P Fowler

Counsel for the Village of  
Barrington, Illinois

Enclosure

cc All parties of record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35087



CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION  
- CONTROL -  
EJ & E WEST COMPANY

**THE VILLAGE OF BARRINGTON'S**  
**MOTION FOR WAIVER OF OR PERMISSION TO EXCEED PAGE LIMITS**  
**REGARDING ITS FILED PETITION FOR STAY**

ENTERED  
Office of Proceedings

JAN 7 2009

Part of  
Public Record

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**ATTORNEYS FOR  
THE VILLAGE OF BARRINGTON,  
ILLINOIS**

Dated January 7, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35087

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CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION  
– CONTROL –  
EJ & E WEST COMPANY

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**THE VILLAGE OF BARRINGTON'S  
MOTION FOR WAIVER OF OR PERMISSION TO EXCEED PAGE LIMITS  
REGARDING ITS FILED PETITION FOR STAY**

The Village of Barrington, Illinois ("Barrington"), through counsel, hereby submits its motion for a waiver of or, alternatively, permission to exceed the page limits specified in 49 C F R § 1115 5(c) <sup>1</sup> On January 5, 2009, Barrington filed its Petition for Stay of the Board's December 24, 2008 decision in the above-captioned proceeding (the "Decision") Barrington inadvertently exceeded the ten (10) page limitation stated in 49 C F R § 1115 5(c) As further discussed below, Barrington respectfully requests that the Board waive or grant Barrington permission to exceed that page limitation, and accept Barrington's filed Petition for Stay for consideration

**I. Discussion**

As the Board is well aware, this proceeding has generated extensive public interest and participation, and resulted in the creation of a voluminous record underpinning the equally

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<sup>1</sup> Barrington has not styled this motion as late filed because, although Barrington previously filed its Petition for Stay on January 5, 2009, the deadline for filing any petitions for stay is January 13, 2009, or "not less than 10 days prior to the date the terms of the action take effect." 49 C F R § 1115 5(a) Parties may also file a "motion addressed to any pleading" within 20 days of its filing, under 49 C F R § 1104 13 Nonetheless, should the Board consider this request late filed, Barrington also respectfully requests leave to late-file this motion

lengthy DEIS and FEIS. The Board's Decision in turn exceeded eighty (80) pages. Barrington respectfully submits that, under the Board's governing standards for grant of a stay, it is reasonable to waive or permit Barrington to exceed the 10-page limitation in order to afford it an opportunity to fairly make its case for a stay.<sup>2</sup> See, e.g., *Union Pacific Corporation, et. al – Control – Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, 1996 WL 226913, \*1 n 6 (served May 6, 1996) (waiving page limitation upon reasonable request), *Public Views on Major Rail Consolidations*, STB Ex Parte No. 582, \*1 n 1 (served April 7, 2000) (same).

Specifically, the standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits, (2) whether petitioner will be irreparably harmed in the absence of a stay, (3) whether issuance of a stay would substantially harm other parties, and (4) whether issuance of a stay would be in the public interest.<sup>3</sup> Given the extensive record, voluminous DEIS/FEIS, and resulting lengthy Decision, it is reasonable and appropriate to waive the page limitation in order to permit Barrington to properly argue each of these four elements and provide the Board with sufficient grounds for it to have an opportunity to make a reasoned decision on the requested stay.

It bears repeating that Barrington, among other municipalities and individuals, is having the deleterious impacts of the Decision and related NEPA violations thrust upon it involuntarily. As a result, Barrington respectfully submits that it should be permitted to elaborate on those

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<sup>2</sup> Indeed, as noted in the Petition for Stay, Barrington did not even argue all of the issues it may advance on appeal, but only those it feels are sufficient to meet or exceed the Board's standard for a stay. See Petition for Stay, at 1 n 2.

<sup>3</sup> See, e.g., *Illinois Cent. R.R. Co – Constr. and Operation Exemption – In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877 (served February 20, 2002) (citing *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958), *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977)).

issues in support of its Petition for Stay. For example, even a brief discussion of just some of the irreparable harms that Barrington and others will suffer should the Board's Decision become effective reached six (6) pages in Barrington's Petition for Stay.<sup>4</sup> Restricting Barrington to the ten (10) page limitation of section 1115 5(c) for its entire argument would artificially constrain the discussion of issues and harms relevant to the stay standard, which are being unwillingly forced upon Barrington in the first place.

Indeed, Canadian National Railway Company and Grand Trunk Corporation (collectively, "Applicants") have also filed a Motion to Strike Barrington's Petition for Stay for exceeding the page limitation of 49 C.F.R. § 1115 5(c).<sup>5</sup> Contrary to Applicants' implications, the Board has accepted filed petitions in excess of the page limitation of section 1115 5(c), including when the proceeding involves unusual or difficult issues. *See, e.g., Railroad Ventures, Inc – Acquisition and Operation Exemption – Youngstown & Southern Railroad Company*, STB Finance Docket No. 33385, \*2 n.6 (served November 2, 2000) (reviewing petition for stay that exceeded page limit), *IC Industries, Inc et al – Securities Notice of Exemption Under 49 CFR 1175*, 1988 WL 224976, Finance Docket No. 31231, \*2 (decided November 7, 1988) (noting that Commission's procedural rules are interpreted liberally under 49 C.F.R. § 1100.3 and that rejection of petition exceeding 10-page limit was not warranted).

Nor would Applicants or other parties be unduly prejudiced by the Board's consideration of Barrington's longer Petition for Stay. As a threshold matter, other parties are not even required to file a reply. 49 C.F.R. § 1115 5(a). If Applicants or other parties do elect to file a

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<sup>4</sup> Petition for Stay, at 49-55

<sup>5</sup> *See Applicants' Motion to Strike the Village of Barrington's Petition for Stay Pending Judicial Review* (Board served January 6, 2009) (CN-53) (the "Motion to Strike"). To the extent a specific reply to Applicants' Motion to Strike is warranted, Barrington requests that the Board also deny Applicant's Motion to Strike for the reasons set forth herein.

reply and determine that said reply likewise requires additional pages, they may also simply seek a waiver of or permission to exceed the page limitation *See, e g . Railroad Ventures, Inc – Acquisition and Operation Exemption – Youngstown & Southern Railroad Company, STB Finance Docket No 33385, \*1 and n 6 (served November 2, 2000)*

Consequently, Barrington believes that full consideration of its filed Petition for Stay is warranted, and that the waiver of or grant of permission to exceed the page limitation of 49 C F R § 1115.5(c) is reasonable

## **II. Conclusion**

For the foregoing reasons, Barrington respectfully requests that the Board waive or, alternatively, grant Barrington permission to exceed the page limitation of 49 C.F R § 1115 5(c) and accept Barrington's filed Petition for Stay for consideration

Respectfully submitted,



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Janie Sheng

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(202) 778-9000

**ATTORNEYS FOR  
THE VILLAGE OF BARRINGTON,  
ILLINOIS**

Dated January 7, 2009


**CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2009, I caused the foregoing **Village of Barrington, Illinois' Motion for Walver of or Permission to Exceed Page Limitation Regarding Its Filed Petition for Stay** to be served via first class mail, postage prepaid, or by a more expeditious method of delivery, on all parties of record and on the following

Paul A. Cunningham  
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Brendon P. Fowler